

September 12, 2018

Mr. Cosmo Servidio
Regional Administrator
US Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, PA 19103

**RE: US EPA Expectations for Phase III Watershed Implementation Plans (WIP)
Pennsylvania Questions and Concerns**

Dear Mr. Servidio:

The Pennsylvania Department of Environmental Protection (DEP) completed a comprehensive review of the EPA Expectations document for the jurisdictions' Chesapeake Bay Phase III Watershed Implementation Plans (WIP) that was finalized on June 19, 2018. In working with our partners on various workgroups, outside stakeholders and our Phase III WIP Steering Committee, a series of questions and concerns have been raised where further clarification would be helpful. These are summarized below.

Level of Funding

On Page 2, your letter states that EPA may possibly redirect Bay restoration resources to those jurisdictions that were assigned additional pollutant load reductions as a result of new scientific and accounting procedures. The next sentence states that for jurisdictions that have not achieved the levels of pollutant load reductions committed to under their Phase II WIPs by 2017, EPA does not expect to provide additional funding for achieving those pollutant load reductions. Because most of the states did not meet the 2017 reduction goals in their entirety, Pennsylvania recommends that allocation of resources be based on effectiveness of reductions, rather than on past progress.

Help with Federal Facility Coordination

Our strategy is to treat the federal facilities as a separate local planning goal, collectively, with the Department of Defense comprising 90% of that goal. The individual loads from each facility will be subtracted from each county's local planning goal and added to this separate planning goal for Federal Facilities. Like the counties, these facilities will be expected to achieve approximately 76% of E3 of the loading from that facility as their planning goal, or the 2015 reduction target assigned to them by EPA, whichever is less. The action plan for the Federal Facilities will be a compilation of the milestones each facility will take to address their individual planning goal and will be a separate section of Pennsylvania's Phase III WIP. Is this approach satisfactory to EPA?

Specific Expectations

To ensure Pennsylvania's Phase III WIP will meet EPA's expectations, below is our current understanding of the evaluation that EPA will conduct on Pennsylvania's WIP. This list is a compilation of the expectations for all jurisdictions and the specific expectations listed for Pennsylvania in Appendix B of EPA's Expectations Document. Enclosed is our proposed outline for the Phase 3 WIP. In the list below, the references in parentheses refer to the section of this outline where the expectation will be addressed. DEP would appreciate confirmation from EPA that this is satisfactory.

A. All States' Expectations

1. Programmatic and numeric implementation commitments between 2018 and 2025. (Section 2, 3, and 5, Appendix A and County Plans)
2. Gaps in programmatic capacity including: (Section 2, Section 7)
 - a. Capacity to oversee and implement the MS4 and other stormwater management programs.
 - b. Increasing resources to deliver the necessary agricultural conservation practices.
 - c. Securing legislative, regulatory, cost-share, incentive, voluntary and market-based levels of reductions across all sectors.
 - d. Tracking systems and BMP verification programs to fully account for growth and offsetting. (Appendix B, Section 2)
3. Comprehensive strategies for engagement of the full array of partners with a list of criteria of what should be addressed in these strategies. (Section 8)
4. Local planning goals, showing how the planning targets will be achieved. (Section 1, Section 3, Section 4, Appendix A, County Plans)
5. Climate Change narrative. (Section 6)
6. Accounting for Growth. (Section 2)

B. Pennsylvania-Specific Expectations

1. Commitment to programmatic, policy, legislative, and regulatory changes needed. (examples provided) (Section 2)
2. The technical details (input deck) and demonstrated collaboration among a list of partners to include a schedule for implementation. (Section 2, Section 5)
3. Commitment to the level of staff, partnerships, and financial resources needed. (example is a workload analysis) (Section 2, Section 7)
4. Continued commitment to track, report, and participate in grant meetings with EPA. (Grant award, grant workplan)
5. Contracting out or otherwise obtaining services of a third party to perform activities central to the implementation of the WIP. (Grant workplan, grant award)
6. Modification of the current expected reduction of the Urban/Suburban Stormwater Sector. (Section 1, Section 2)
7. Commitment to additional reductions of loadings from point sources. (Section 1, Section 2, Section 7)

Additional Requests for Clarification

Beginning on Page 2, EPA outlines a list of four bulleted items related to “programmatic capacity.” Pennsylvania would like clarification if this is the entire scope of programmatic capacity gaps that need to be addressed within the term, or if there are other programmatic components that EPA will expect the jurisdictions to address? If so, what are those additional gaps?

On Page 16, there is a list of different programmatic options that EPA has previously discussed with Pennsylvania. We understand these to be a list of examples that can be evaluated further with our stakeholders and the Phase III WIP Steering Committee. Pennsylvania seeks clarification that the inclusion of these elements in the Expectations Document does not require inclusion as components of our Phase III WIP.

In addition, to ensure we have a complete understanding of this menu of options, Pennsylvania requests further clarification on the following options:

1. Agricultural Certainty: Upon development of Pennsylvania’s certainty program, can Pennsylvania’s farms be individually eligible for “certainty” upon attainment of practices that are estimated to “reach TMDL reductions” for that farm, or will other conditions or requirements (i.e., categorical, regionally or geographically based, or other broader reduction threshold) also be attained before that individual farm is eligible?
2. “Restrictions on Manure Application during Winter”: In addition to the requirements of Chapter 93, what restrictions and requirements would EPA expect Pennsylvania to include in its WIP with this option?
3. Nutrient Trading: The Expectations Document mentions the revision of state trading regulations to “facilitate MS4 and interstate trading.” While we can revise our state trading regulations, unless the other states in the watershed have a similar expectation to participate in interstate trading, this will be extremely difficult for us to accomplish. Putting the expectation on Pennsylvania alone to facilitate interstate trading is unrealistic.

Finally, on Page 17, the last expectation for, “Commitment to additional reductions of loadings from point sources to include reductions in current facility specific wasteload allocations for the significant municipal and industrial wastewater discharging facilities in order to increase the share of the allocation to stormwater and/or agriculture” is a significant concern. A substantial investment in wastewater system upgrades has already been made in Pennsylvania. Further upgrades to these wastewater facilities are cost prohibitive and unrealistic. There are more cost-effective solutions available to achieve these reductions in the agricultural and urban stormwater sectors. Pennsylvania questions EPA’s intentions of including this language.

Mr. Cosmo Servidio

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We will continue our momentum in engaging with stakeholders and improving Pennsylvania's local water quality to achieve the recently finalized planning targets of the Chesapeake Bay by 2025. I look forward to working with you to ensure Pennsylvania's Phase III WIP meets the EPA's Expectations as released.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick McDonnell', written over a horizontal line.

Patrick McDonnell
Secretary

Enclosure

**Phase 3 Watershed Implementation Plan
Drafting Workplan**

Executive Summary – December -- (*Kristen, Communications Workgroup, Water Words That Work*)

Section 1. Introduction – November -- (*Kristen, Communications Workgroup, Water Words That Work*)

- Background
- Planning Targets by Basin
- Planning Targets by County
- Progress to Date
- Steering Committee and Workgroup Framework

Section 2. Watershed-Wide Initiatives – November -- (*Compilation – Nicki, Natahnee, Eva*)

- Workgroup Scoping Scenarios for Reductions – July – *Workgroups, EPA CBPO*
- Action Plans for Implementation of Scoping Scenarios – October -- *Workgroups, Technical Support Team*
- Existing and Needed Resources for Implementation – October -- *Workgroups, Funding Workgroup*
- Summary of Results by County
- Accounting for Growth

Section 3. Countywide Action Plans – November – (*Nicki, Frank Dukes*)

- Guidelines for Local Planning Process
- Summary of Results from 4 County Pilot
- Schedule for Completion of Remaining Countywide Action Plans

Section 4. Federal Facilities -- October -- (*Nicki, Ted, EPA CBPO, Sarah Diebel*)

- Planning Target
- 2017 Progress
- Action Plan with Milestones
- Existing and New Resources

Section 5. Other Multi-County/Priority Initiatives – October – (*Nicki, Natahnee, Ted, SRBC*)

- 2017 Progress
- Action Plan with Milestones
- Existing and New Resources

Section 6. Climate Change/Climate Resiliency – October/November – (*Policy Office?*)

Section 7. Existing and Needed Resources – October – (*Nicki, Funding Workgroup, Jordan*)

Section 8. Local Engagement Strategy (*Kristen, Allison, Communications Workgroup, Water Words that Works*)

- Summary of Work Done
- Long Term Plan for Moving Forward

Appendix A One-Pagers of Final Countywide Action Plans (*Kristen, Communications Workgroup, Water Words That Work*) (Full plans would also be posted to the website)

Appendix B BMP Verification Program QAPP – October - (*Natahnee, Ted, Frank Dukes*)

Countywide Support Teams:

Coordination and Oversight: Nicki, Kristen
Facilitation, Mediation Services: Jennifer Handke, Consulting With A Purpose
Technical Support Oversight and Supervision: Ted, Matt Johnston
Supervision of Interns: Ted, Natahnee
Development of County Toolboxes, Workgroup Templates
Jordan Baker
Eva Swanson
Allison LaBine

Adams Support Team:

Team Leader/Coordinator: Kristen Wolf
Meeting Coordination, Facilitation, Meeting Notes, Template: Kristen and Ann Devine
Implementation and Regional Office Coordination: Joe Adams
Technical Support (CAST Runs, Data Collection and Analysis): Tyler Shenk, ICPRB
Workgroup Contacts:
Agriculture – Bill Chain
LAG – Davitt Woodwell and Bill Fink

Franklin Support Team:

Team Leader/Coordinator: Nicki Kasi
Meeting Coordination, Facilitation, Meeting Notes, Template: Nicki
Implementation and Regional Office Coordination: Bob Conrad
Technical Support (CAST Runs, Data Analysis, etc): Jamie Shallenberger, ICPRB
Workgroup Contacts:
Agriculture – Jennifer Reed-Harry
LAG – Davitt Woodwell and Bill Fink

Lancaster Support Team:

Team Leader/Coordinator: Nicki Kasi
Meeting Coordination, Facilitation, Meeting Notes, Template: Nicki and Contractor
Implementation and Regional Office Coordination: Joe Adams
Technical Support (CAST Runs, Data Analysis, etc): Tyler Shenk
Workgroup Contacts:
Agriculture – Matt Royer
LAG – Davitt Woodwell and Chris Thompson

York Support Team:

Team Leader/Coordinator: Kristen Wolf
Meeting Coordination, Facilitation, Meeting Notes, Template: Kristen and Ann Devine
Implementation and Regional Office Coordination: Bob Conrad
Technical Support (CAST Runs, Data Analysis, etc): Jamie Shallenberger
Workgroup Contacts:
Agriculture – Matt Royer
LAG – Davitt Woodwell and Pam Shellenberger
SW – Felicia Dell